

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JESUS MIRANDA, Plaintiff, v. ANDREW SAUL, COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION, Defendant.	§ § § § § § § §	NO. EP-20-CV-128-MAT
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MEMORANDUM OPINION AND ORDER

This is a civil action seeking judicial review of an administrative decision pursuant to 42 U.S.C. §§ 405(g). Plaintiff Jesus Miranda (“Plaintiff”) appeals from the decision of the Commissioner of the Social Security Administration (the “Commissioner”) denying his application for Social Security Disability Insurance Benefits. (Pl.’s Compl., ECF No. 4). On January 13, 2021, the Commissioner filed “Defendant’s Unopposed Motion to Reverse with Remand and Enter Judgment and Incorporated Memorandum” (“Motion to Remand”). (ECF No. 22). In accordance with 28 U.S.C. § 636(c) and Appendix C, Rule 1(i) of the Local Court Rules of the Western District of Texas, the parties have consented to proceed with this case before the undersigned, including all proceedings and the entry of final judgment. (ECF Nos. 5 & 17). For the reasons set forth below, the Court will **GRANT** the Commissioner’s Motion to Remand and the Commissioner’s decision will be **REVERSED** and the action **REMANDED** for further administrative proceedings.

“Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party . . . may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision” 42 U.S.C.

§ 405(g). Pursuant to sentence four of Title 42 United States Code section 405(g), the district court of the United States where the case is properly brought “shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g). The Court’s review is limited to a determination of whether the Commissioner’s final decision “is supported by substantial evidence on the record as a whole and whether the [Commissioner] applied the proper legal standard.” *Myers v. Apfel*, 238 F.3d 617, 619 (5th Cir. 2001) (citing *Greenspan v. Shalala*, 38 F.3d 232, 236 (5th Cir. 1994)).

In his brief, Plaintiff argues two points of error: (1) that the Administrative Law Judge’s (“ALJ”) residual functional capacity (“RFC”) determination was not supported by substantial evidence because the ALJ “disregarded the objective medical diagnosis of claimant’s chronic pain associated with the cervical and lumbar disc disease and the carpal and cubital tunnel syndrome;” and (2) that “[t]he ALJ erred in the Step 5 finding that Plaintiff is able to communicate in English.” (Pl.’s Br., ECF No. 20).

The Commissioner did not file a brief addressing the merits of Plaintiff’s arguments, but instead filed the instant Motion to Remand. (ECF No. 22). In the Motion to Remand, the Commissioner moves the Court to reverse the Commissioner’s final administrative decision and remand the case “to allow the Commissioner to conduct further proceedings pursuant to sentence four of 42 U.S.C. § 405(g) and *Melkonyan v. Sullivan*, 501 U.S. 89 (1991).” *Id.* at 1. The Motion to Remand also includes a Certificate of Conference, where the Commissioner notes that Plaintiff’s attorney, Mr. Art Werge, responded by email on January 13, 2021 that “he had no objections to Defendant’s Motion to Remand.” (ECF No. 22). Plaintiff has not filed any further objections or responses in opposition to Defendant’s Motion to Remand.

Having reviewed Plaintiff's brief, the administrative record, and the Commissioner's unopposed Motion to Remand, the Court is of the opinion that the motion should be granted, the decision of the Commissioner should be reversed, and the case should be remanded for further proceedings. Accordingly,

IT IS ORDERED that the Commissioner's Motion to Remand (ECF No. 22) is **GRANTED**.

IT IS FURTHER ORDERED that the decision of the Commissioner will be **REVERSED** and the action **REMANDED** pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further administrative proceedings.

SIGNED and ENTERED this 4th day of February, 2021.



MIGUEL A. TORRES
UNITED STATES MAGISTRATE JUDGE